IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 22277 of 2002

Between:

Mysa Lingaiah, S/o Agaiah,

R/o.13-6-138, Matwada, Warangal District presently living in
Anuraga Human Services Old age Home, Tolichowk, Hyderabad.

..... PETITIONER

AND

1. Special Secretary Ministry of Home Affairs
the Union of India, Loknaik Bhavan, Khan Market,
New Delhi

2. The District Collector, Warangal District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in rejecting the case of the petitioner vide order dated 4.4.2002 for sanction of Freedom Fighter Pension as highly illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and consequently direct the respondents to sanction the Freedom Fighter Pension to the petitioner from the date of application.

Counsel for the Petitioner :MR.N.M.KRISHNAIAH

Counsel for the Respondent No.1: MR.L.PRABHAKAR REDDY

The Court made the following :

-

-

-

-

-

ORDER:

The petitioner challenges the order dated 04.04.2002 of the first respondent whereby and whereunder the application of the petitioner for sanction of Freedom Fighters Pension under Swathantra Sainik Sammon Pension 1980 ('the pension scheme' for brevity) was rejected, as arbitrary, illegal and violative of Articles 14 and 16 of Constitution of India.

The case of the petitioner in brief is as follows. The petitioner alleges that he was a freedom fighter who fought against Nizam Government and was convicted during 1947. He suffered underground for a period of one year. He allegedly went underground provided warrant of arrest issued by the Nizam Government in C.C. No. 311/1/1356 Fasli on the file of the Court of the Judicial First Class Magistrate, Yellandu. He was sent to jail on detenue on 31.3.1357 Fasli vide Sl.No.7424 and was released on 19.4.1357 Fasli as per the orders of the Home Secretary, Hyderabad State. To this effect, a certificate was issued by the Superintendent of Central Jail, Warangal. After the scheme came into force, the petitioner made an application to Hyderabad Special Screening Committee on 20.4.1998 including all documents for grant of freedom fighters pension. The first respondent addressed to the Chief Secretary to Government of A.P. to verify the claims of persons claiming pension under the scheme. On such request being made by the Central Government, the State Government referred the matter to the District Collectors for verification. The case of the petitioner was verified by Mandal Revenue Officer, Warangal, who sent a report to Revenue Divisional Officer vide his proceedings dated 23.3.1999 duly recommending for sanction of pension under the pension scheme. The proposals were sent to District Collector, who in turn, sent a report to the State Government recommending for sanction of pension.

Alleging that the respondents failed to take any decision on the application, the petitioner filed writ petition being W.P.No.24175 of 2001. This Court disposed of the same on 23.11.2001 directing the respondents to consider the case of the petitioner for sanction of pension to him. However, by impugned order dated 4.4.2002, the first respondent rejected the application, assailing which, the present writ petition is filed.

A counter affidavit is filed on behalf of the first respondent. It is stated that as per the pension scheme, the Central Government is required to consider an application for sanction of pension only after receiving the verification report from the State Government. Even before such report was received, the petitioner filed a writ petition, which was disposed of directing the first respondent to consider the case of

the petitioner. In view of the same and also in view of the representation made by the petitioner dated 15.12.2001 his case was examined and he was found not eligible for grant of pension. It is further stated that the petitioner convicted for a period of twenty (20) days during 1947 movement and as per the scheme minimum of six months jail suffering is required to become eligible for grant of pension. As the suffering by the petitioner is less than the required period of six months, keeping in view of the judgment of the Supreme Court in **Union of India v. M.L. Azad** , the application was rejected. The first respondent further stated that the petitioner failed to furnish acceptable evidence in support of his claim that he underwent underground suffering, and therefore, the petitioner is not eligible for grant of pension under the scheme.

The learned counsel for the petitioner submits that the petitioner was suffered underground for more than one year during 1947 movement and therefore, he is eligible for pension scheme. This contention is refuted by the learned Central Government Standing Counsel.

As per the pension scheme, the claim of underground suffering is considered subject to furnishing documentary evidence by way of Court/Government orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. The petitioner admittedly has not produced any such record. Further, in the first round of litigation, this Court disposed of the writ petition in the following terms.

> The petitioner is a Freedom Fighter. He has filed this Writ Petition invoking the jurisdiction of this Court under Article 226 of the constitution of India for issue of a writ of Mandamus seeking to direct the respondent to consider his case for payment of Freedom Fighters pension under Swathantra Sainik Sammon pension scheme.
>
> It is the case of the petitioner that he was a congress political sufferer, that he was convicted for a period of 20 days during 1947 movement and he was sent to jail as detenu on 31.3.1357 Fasli, as entered at Serial No. 7424 and that he was released on 19.4.1357 Fasli. It is the case of the petitioner that he has submitted an application to the Hyderabad Special Screening Committee on 20.4.1998 for sanction of freedom pension. Thereupon his case was verified by the Mandal Revenue Officer, Warangal vide proceedings in Rc.No. C2/817/99 23.3.1999 recommending the case of the petitioner for sanction of Freedom Fighters pension under Swathantra Sainik Sammon pension 1980 who in turn sent the proposals to the District Collector and the District Collector in turn sent the proposals to the respondent vide proceedings dated 19.7.1999. Thereafter the petitioner has also submitted another representation dated 25.5.2000 to the respondent. It is the grievance of the petitioner that till today no action has been taken by the respondent even on his representation dated 25.5.2000 and that he was not sanctioned Freedom Fighters pension so far.
>
> Heard the learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the respondent.
>
> Having regard to the facts and circumstances of the case, there shall be a direction to the respondent to consider the case of the petitioner for sanction of Freedom Fighters

pension and pass appropriate orders in accordance with law within a period of three months from the date of receipt of a copy of this order. There will be no order as to costs.

A reading of the above order would show that the petitioner was convicted only for a period of twenty (20) days and therefore, he is not eligible for claiming pension. The petitioner nowhere contended before this Court in the earlier writ petition that he suffered underground suffering during 1947 movement. In view of the clear finding of this Court in the earlier writ petition that he suffered imprisonment for twenty (20) days, the petitioner cannot be allowed to change his stand again. A perusal of the impugned order would show that the first respondent has considered the claim of the petitioner keeping in view the guidelines issued in the Pension scheme 1980 and there is no ground to invalidate the order.

In **Union of India v. M.L. Azad's** case (referred to supra), the Supreme Court categorically laid down that suffering imprisonment for a minimum period of six months in the main land before independence is essential criterion for claiming pension. Paragraphs 7 and 8 of the judgment are relevant, which read as under:

> The Sammam Pension Scheme was introduced during the silver jubilee year by the Government of India. Indeed it is a modification of the earlier scheme known as "the Freedom Fighters' Pension Scheme of 1972". From 1.8.1980, the benefit of the Samman Pension Scheme has been extended to all freedom fighters as a token of *samman* to them. The eligibility criterion to earn pension under the Samman Pension Scheme is that one should be a freedom fighter. For purposes of this Scheme a freedom fighter is defined in para 4 of the said clause. Clause (a) of para 4 which is relevant for our purpose, is quoted hereunder:
>
> > "(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before independence. However, ex-INA personnel will be eligible for pension if the imprisonment detention suffered by them was out side India."
>
> A perusal of this clause makes it abundantly clear that what is germane is suffering a minimum imprisonment of six months in the mainland before independence but not merely suffering an order awarding imprisonment of six months by a competent court. Explanation 2 to para 4, however, treats the period of normal remission up to one months as part of actual imprisonment.

The claim of the petitioner is devoid of any merit and therefore, the writ petition is liable to be rejected and it is accordingly dismissed without any order as to the costs.

_____

(V.V.S.RAO, J.)

05th August 2004.

Tsr.

To

1. The Special Secretary, Ministry of Home Affairs,
the Union of India, Loknaik Bhavan, Khan Market,
New Delhi

2. The District Collector, Warangal District.

3. Two C.D. copies.